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**From:** Steven Moser <[steven.moser@moserlawfirm.com](mailto:steven.moser@moserlawfirm.com)>  
**Sent:** Thursday, September 1, 2022 2:29 PM  
**To:** Rob Modica <[rmodica@cmocllp.com](mailto:rmodica@cmocllp.com)>; Sofya Uvaydov <[suvaydov@cmocllp.com](mailto:suvaydov@cmocllp.com)>  
**Cc:** Moser Law Firm Legal Support 2 <[legalsupport2@moserlawfirm.com](mailto:legalsupport2@moserlawfirm.com)>  
**Subject:** Motion to Vacate

Rob & Sofya

In looking at the defendant's affidavit, it contains no specific information showing when Defendants became aware of the lawsuit or how they diligently responded.

For example, Mr. Swiezeriski states "The Summons and Complaint in this matter were not served on me, and I did not learn until several months later that the Summons and Complaint were erroneously sent to my prior home address of 191 Tulip Ave, Floral Park, New York, 11001." ¶ 11. This suggests he knew of the lawsuit "several months" after June 25, 2021, but the statement is otherwise vague.

He also states: "I was unaware of the Summons and Complaint until a secretary from the Episcopal Church nearby alerted me to the fact that I had a stack of mail that had been sent to the old address." ¶ 13. Again, no mention of the date.

Also "Upon learning about the instant lawsuit and after receiving the Summons and Complaint, I took prompt action and immediately notified and engaged with counsel." Again, no mention of when he learned of the lawsuit, received the Summons and Complaint, or "engaged with counsel."

At this point, the Defendant has not satisfactorily explained why the complaint was not answered in a timely fashion, and therefore has not met his burden to vacate the default.

For the foregoing reasons, we will accept a supplemental affidavit in support of the motion to vacate on or before September 8, 2022. If the affidavit is not supplemented, we intend on challenging the sufficiency of the affidavit and arguing that evidence should not be submitted with the reply papers.

If you would like to discuss the case, please call me on my cell phone below.

Steven J. Moser  
Moser Law Firm, PC  
5 E Main Street  
Huntington, NY 11743  
Cell 516-671-2776

# EXHIBIT 1